April 26, 2005

Noteworthy:
Nuke the Filibuster, *LA times*, 4/26/05
Nuclear Fallout, *Investors Business Daily*, 4/26/05

Nancy M. Zirkin, deputy director of the Leadership Conference on Civil Rights, said in an interview that she was amazed to hear of Reid's and Durbin's comments. "I can't even wrap my head around it," she said. "Here we are doing all this work, spending all this money" to keep the seven nominees off the appellate courts. "You'd best believe I'll be on the phone to Reid's office," she said.
When Bush renominated the seven contested appointees earlier this year, Reid showed no willingness to accept any of them. "The president is at it again with the extremist judges," he said, adding that the Senate should not "redebate the merits of nominees already found too extreme by this chamber."
Excerpt from *Washington Post*, Chuck Babington, 4/26/05

Nan Aron, president of the Alliance for Justice, which works with liberal groups to fight conservative appointees, expressed alarm that Democrats were even talking about confirming some of the judges, predicting a backlash if they followed through. "Judges who serve lifetime appointments have too much of an effect on our everyday life to simply be horse-traded for political compromise," she said. "This was not a political game."
Excerpt, *New York Times*, Carl Hulse, 4/26/05

EDITORIAL- LA TIMES
Nuke the Filibuster

April 26, 2005

These are confusing days in Washington. Born-again conservative Christians who strongly want to see President Bush's judicial nominees voted on are leading the charge against the Senate filibuster, and liberal Democrats are born-again believers in that

reactionary, obstructionist legislative tactic. Practically every big-name liberal senator you can think of derided the filibuster a decade ago but now sees the error of his or her ways and will go to amusing lengths to try to convince you that the change of heart is explained by something deeper than the mere difference between being in the majority and being in the minority.

At the risk of seeming dull or unfashionable for not getting our own intellectual makeover, we still think judicial candidates nominated by a president deserve an up-or-down vote in the Senate. We hardly see eye to eye with the far right on social issues, and we oppose some of these judicial nominees, but we urge Republican leaders to press ahead with their threat to nuke the filibuster. The so-called nuclear option entails a finding by a straight majority that filibusters are inappropriate in judicial confirmation battles.

But the Senate shouldn't stop with filibusters over judges. It should strive to nuke the filibuster for all legislative purposes.

The filibuster debate is a stark reminder of the unprincipled and results-oriented nature of politics, as senators readily switch sides for tactical advantage. Politicians' lack of consistency on fundamental matters — the debate over the proper balance of power between Washington and the states would be another case in point — is far more corrosive to the health of American democracy and the rule of law than any number of Bush- appointed judges could ever be. For one thing, it validates public wariness about politicians professing deep convictions.

Liberal interest groups determined to keep Bush nominees off the bench are in such a frenzy that they would have you believe that the Senate filibuster lies at the heart of all American freedoms, its lineage traceable to the Constitution, if not the Magna Carta. The filibuster, a parliamentary tactic allowing 41 senators to block a vote by extending debate on a measure indefinitely, is indeed venerable — it can be traced back two centuries. But it is merely the product of the Senate's own rule-making, altered over time; the measure was not part of the founding fathers' checks and balances to prevent a tyranny of the majority. The Senate's structure itself was part of that calculus.

The filibuster is a reactionary instrument that goes too far in empowering a minority of senators. It's no accident that most filibusters have hindered progressive crusades in Washington, be it on civil rights or campaign finance reform. California's Democratic Sen. Barbara Boxer, one of those recent converts to the filibuster, embarrassed herself by hailing Sen. Robert Byrd (D-W.Va.) as her inspiration at a pro-filibuster rally. At least Byrd is being consistent in his support — he filibustered the 1964 Civil Rights Act.

A showdown is looking increasingly likely, though it isn't clear that all Republicans want this fight. Some of them realize they will again be in the minority someday and that the filibuster is a handy brake on the federal government's activism. If their caution prevails, or if Republicans take on the filibuster only in the narrow context of confirmation battles, we will happily weigh in again in the future, still on the anti-filibuster team.

EDITORIAL: Nuclear Fallout

INVESTORS BUSINESS DAILY

Rules Of Order: The Democrats would have us believe filibustering is a time-honored constitutional and Senate tradition. It's not. And it wasn't that long ago that they felt quite differently.

A showdown now looms after Republicans on the Senate Judiciary Committee used their 10-8 majority to move the nominations of Janice Rogers Brown and Priscilla Owen for federal appeals court seats to the full Senate.

Democrats threaten to filibuster these picks, Majority Leader Bill Frist threatens to employ the unfortunately named "nuclear option" restoring the quaint notion that 51 votes constitutes a majority, and Vice President Dick Cheney says he's willing to be the tie-breaking vote to ban filibusters of judicial nominees.

Democrats are trying to portray GOP efforts to restore majority rule to the Senate as it relates to judicial nominations as an assault on the traditions of the Senate and the Constitution itself. As if the filibuster were James Madison's dying wish.

As a practical matter, the filibuster didn't even exist until the 1830s, when it was used to block legislation and not judicial picks. It was used by Democrats to defend slavery and oppose the Civil Rights Act — hardly noble purposes.

In 1841, the filibuster was used by Sen. John Calhoun to defend slaveholding interests. In 1957, then-Democrat Sen. Strom Thurmond held the floor for 24 hours straight to block civil rights legislation. And in 1964, 18 Democrats and one Republican blocked the Civil Rights Act for 2 1/2 months.

In 1916, Sen. Robert La Follette, a Republican, used it to block legislation to let merchant ships arm themselves against German U-boats. This prompted the Senate in 1917, at the behest of President Wilson, a Democrat, to adopt the first cloture rule, Rule XXII, requiring a two-thirds to end debate.

This was amended 60 years later by none other than Robert Byrd, D-W.Va., the Senate's constitutional guardian and conscience, who reduced it to a three-fifths requirement.

In sum: For the first 200 years of our republic, Senate "tradition" never required 60 votes to approve judges. Filibusters are neither an idea of the Founding Fathers nor a historical tradition of the Senate. Cloture rules are a 20th century phenomenon, with the current rule less than 30 years old. Systematic filibustering of a president's appellate-court nominees is totally unprecedented.

Democrats didn't always love the filibuster. In September 1999, in a debate over Clinton appellate-court nominees, Sen. Patrick Leahy of Vermont thundered on the Senate floor: "Vote them up or down! That is what the Constitution speaks of in our advise-and-consent capacity." An up-or-down vote, he said then, was a "constitutional responsibility."

The year before, none other than Sen. Ted Kennedy of Massachusetts solemnly intoned: "We owe it to Americans to give these (judicial) nominees a vote. If our Republican colleagues don't like them, vote against them, but give them a vote."

In 1995, Sen. Tom Harkin of Iowa proposed a plan to end filibusters identical to one now proposed by Frist. The Harkin plan was supported by 19 Democrats, including Sens. Kennedy, Barbara Boxer of California, Joseph Lieberman of Connecticut, Russell Feingold of Wisconsin and John Kerry of Massachusetts.

Harkin proposed to establish a declining vote requirement for cloture so that by the fourth cloture vote, a simple majority of the Senate would suffice to end debate and allow a floor vote on the matter at hand.

In the Constitution, when the Framers intended more than simple majorities, they explicitly said so. For example, they required a two-thirds majority to convict in an impeachment trial, expel a member, override a presidential veto, approve a treaty or propose a constitutional amendment.

Senate Democrats once opposed the filibustering of judicial nominees; they now support and rail against a "nuclear option" they once proposed themselves. Republicans should expose this hypocrisy, stop worrying and learn to love the bomb.